

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GORDON HEMPTON,

Plaintiff,

v.

POND5, INC., A DELAWARE  
CORPORATION; AND POND5 USER  
CKENNEDY342, A CORPORATION OR  
INDIVIDUAL OF TYPE UNKNOWN,

Defendants.

No.: 3:15-cv-05696-L

**DECLARATION OF LARRY E.  
ALTENBERUN IN SUPPORT OF  
POND5, INC.'S MOTION FOR  
ATTORNEYS' FEES AND COSTS**

I, Larry E. Altenbrun, declare and state as follows:

I am over the age of 18 and am competent to testify to the matters set forth herein. I am employed at Nicoll Black & Feig PLLC ("NB&F") and am one of the attorneys representing defendant Pond5, Inc. ("Pond5"). I submit this Declaration in Support of Pond5's Motion for Attorneys' Fees and Costs.

1. Exhibit 1 to this Declaration is a true and correct copy of an email from Gordon Hempton dated August 10, 2016 (HEMP001065). Exhibit 1 is filed under seal pursuant to the Stipulated Motion to File under Seal filed concurrently herewith.

2. Attached hereto as Exhibit 2 are true and correct copies of emails between Tom Crary of Pond5 and Gordon Hempton between October 13, 2015 and November 4, 2015.

3. Between November 20, 2015 and December 31, 2016, NB&F provided legal

services to Pond5 for the purpose of defending Pond5 against the copyright violation claims brought by Gordon Hempton in the instant lawsuit. Those efforts recently culminated in the Judgment by this Court in favor of Pond5 on January 13, 2017 (Dkt. 67). In the course of this work, NB&F presented Pond5 with 13 invoices, as follows:

Date	Invoice Number	Fee Amount	Hours	Costs	Invoice Total
01/13/2016	117006	\$ 14,490.00	67.60	\$ 0	\$14,490.00
02/16/2016	117109	19,049.00	82.90	0	19,049.00
03/10/2016	117260	18,169.00	76.20	0	18,169.00
04/13/2016	117329	32,055.50	135.30	52.80	32,108.30
05/11/2016	117416	12,726.50	56.60	0	12,726.50
06/14/2016	117524	12,654.00	49.60	0	12,654.00
07/12/2016	117609	8,625.50	33.50	616.00	9,241.50
08/22/2016	117727	15,727.00	67.80	2,180.42	17,907.42
09/12/2016	117814	23,672.50	99.80	232.69	23,905.19
10/10/2016	117870	36,169.50	146.50	491.24	36,660.74
11/07/2016	117940	11,959.50	47.70	25.00	11,984.50
12/05/2016	118067	22,102.00	89.70	2,350.45	24,452.45
01/23/2017	118205	4,859.50	19.50	97.51	4,957.01
<b>Totals:</b>		<b>\$232,259.50</b>	<b>972.70</b>	<b>\$6,046.11</b>	<b>\$238,305.61</b>

Total Fees: **\$ 232,259.50**

Total Costs: **\$ 6,046.11**

Total Fees and Costs: **\$ 238,305.61**

4. Pond5 has therefore incurred \$232,259.50 of “reasonable attorneys’ fees” which were necessarily to defend Pond5 against plaintiff’s copyright claims. Attached as Exhibit 3 is a true and correct copy of the invoices supporting the \$232,259.50 amount.

5. The time entries on the invoices in Exhibit 3 contain by their nature attorney-client privileged and work product protected information. In providing the invoices in their entirety, Pond5 in no way waives its attorney-client privilege or work product confidentiality. All of the work on this file by NB&F attorneys and paralegals was in support of Pond5’s efforts to defend itself in the instant copyright action. The claimed hours are a subset of the actual hours spent on the matter. The billing rates charged and the amount of time spent by the attorneys/paralegals working on the case (attorney Altenbrun/Feig \$265/hour, attorney

Trivett/Jaffe \$200/hour, paralegal Hendricks \$125/hour) were commercially reasonable and not excessive in view of the complexity of the case, the importance of the issues, the number of issues, the conduct of the opposing parties, and the experience of the lawyers involved. Entries were screened to prevent duplication of tasks before the time was billed to Pond5. I made every effort to utilize less expensive lawyers and paralegals, and to attempt to resolve this matter early.

6. The costs in the amount of \$6,046.11 identified in the above table were for the following expenses:

Invoice Date	Invoice Number	Date of Cost	Cost Description	Cost
04/13/2016	117329	02/03/2016	Risk Solutions Online Research INV 1289954-20160229 - Peoplesearch - Gordon Hempton	\$ 19.05
		02/24/2016	Federal Express INV 5-341-12835: Delivery to T. Crary	33.75
07/12/2016	117609	04/11/2016	Buell Realtime Reporting INV 35322 Court Reporter/ Transcript Costs of Thomas Crary	616.00
08/22/2016	117727	07/20/2016	Copy Charges: Teris INV SEA38883: 372 B&W blowbacks; 34 slipsheets	67.92
		07/28/2016	Hillis Clark Martin & Peterson INV 199042: Mediation fee (50/50 share of \$4,225.00 total)	2,112.50
09/12/2016	117814	08/25/2016	TERIS INV SEA39088: Hard Drive duplication - 2 232.69	232.69
10/10/2016	117870	08/24/2016	Federal Express INV 5-533-95705: Express Delivery to Pond5 / T. Crary	47.34
		09/10/2016	Buell Realtime Reporting INV 37623: Certified Transcript Costs for deposition of Thomas Crary Vol II	443.90
11/07/2016	117940	09/21/2016	Zen Courier Services INV 6165: Rush Courier fee for delivery to US District Court Clerk's office – Courtesy Copy of Electronic Filing for Chambers	25.00
12/05/2016	118067	09/21/2016	Buell Realtime Reporting INV 37946: Court Reporter and Certified Transcript Costs for deposition of Gordon Hempton	2,093.75
		10/18/2016	Zen Couriers INV 6225: Courier fee for delivery to Breskin Johnson & Townsend	37.50
		10/30/2016	TERIS INV 020071: Hard Drive copy	219.20
01/23/2017	118205	07/19/2016	Purchase of (3) 60 GB USB drives for working copies of .wav files	<u>97.51</u>
<b>Total:</b>				<b><u>\$6,046.11</u></b>

/s/ Larry E. Altenbrun

LAW OFFICES OF  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/CF system which will send notification of such filing to the following:

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DATED this 26th day of January, 2017.

/s/ Larry E. Altenbrun  
Larry E. Altenbrun, WSBA #31475